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IN THE

Supreme Court of the United States

NO. 882

OCTOBER TERM, 1957

JAMES P. MITCHELL, Secretary of Labor,
U. S. Department of Labor

v.

KENNETH E. RENNEKAMP, Individually and Doing Business as Radio Station WEMR, Petitioner

PETITION OF KENNETH E. RENNEKAMP FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, NO. 12,278

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PETITION OF KENNETH E. RENNEKAMP FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, NO. 12,278

To the Honorable, the Judges of the Said Court:

The Petition of Kenneth E. Rennekamp respectfully represents:

1. That he was the defendant in a proceeding which originated in the United States District Court for the Western District of Pennsylvania.

2. The opinion of the United States District Court for the Western District of Pennsylvania is set forth in the record certified from the Court of Appeals for the Third Circuit and transmitted herewith. The opinion

of the Court of Appeals for the Third Circuit has been certified by the Clerk of that court and is a part of this proceeding Appendix, 15-16. Petitioner is not aware that either of the opinions mentioned have been reported in any official or unofficial reports.

3. Petitioner seeks a review of the judgment of the Court of Appeals for the Third Circuit entered on the second day of January, 1958. No order has been entered respecting a re-hearing or granting an extension of time within which to petition for certiorari. Jurisdiction to review the judgment of the Court of Appeals by Writ of Certiorari is conferred upon this Honorable Court by the Act of Congress of June 25, 1948 c.646, 62 Stat. 928; 28 U.S.C.A., section 1254, which provides that cases in the courts of appeal may be reviewed by this Honorable Court by Writ of Certiorari granted upon petition of any party to any civil or criminal case before or after rendition of judgment or decree.

4. This Honorable Court is being requested to review and determine whether the defendant, as the owner of a small radio station with power of 100 watts and a signal limited to a radius of 10 miles, situated at Emporium, Pennsylvania, 51 miles from the nearest state line, was subject to the provisions of the Fair Labor Standards Act of 1938, June 25, c.676, 52 Stat. 1060, and Fair Labor Standards Amendments of 1949, Oct. 26, c.736, 63 Stat. 910; 29 U.S.C.A. section 201, et seq. A subsidiary question involves the jurisdiction of the U. S. District Court to enter a decree against defendant enjoining him from future violations of the said Act. Disputed issues of fact involved in the proceeding in the U. S. District Court and argued before the U. S. Court of Appeals for the Third Circuit will not be presented for review.

5. The case involves the rights of the petitioner under the Fifth Amendment to the Constitution of the United States and the Fair Labor Standards Act of 1938, as amended, 29 U. S. C. A. section 201, et seq. The applicable provisions of the Constitution of the United States and of the said Act are set forth in the Appendix hereto.

6. Petitioner was the owner of Radio Station WEMR situated at Emporium, Pa., a community 51 miles from the nearest state line. The radio station operated under 100 watts power with a signal strength of 10 miles in radius. On November 28, 1956 its license was surrendered to the Federal Communications Commission for cancellation, and the station dismantled. While in operation, the said radio station would normally be kept on the air by a single employee at any given time, to-wit, an engineer-announcer, except for occasional broadcasts originating outside of the station when an additional employee would be required at the outside point. The complaint filed in the U. S. District Court alleged applicability of the Fair Labor Standards Act of 1938, as amended; that the District Court had jurisdiction; that defendant violated the minimum wage, maximum hours, and record-keeping provisions of the Act, and prayed for the issuance of an injunction restraining the defendant from future violations. The defendant filed an Answer denying the applicability of the Act, the jurisdiction of the court, and the violations alleged. After a hearing before Honorable Joseph P. Willson, District Judge, without a jury, the issues of law and fact were decided against the defendant and a motion for new trial was, after argument, refused. An appeal was taken to the U. S. Court of Appeals for the Third Circuit at #12,278, argued be-

fore McLaughlin, Kalodner and Staley, Circuit Judges, and a judgment and per curiam opinion were thereafter filed affirming the judgment of the District Court.

7. Petitioner respectfully prays for the allowance of a Writ of Certiorari and a review of the judgment of the Court of Appeals for the Third Circuit for the reasons hereinafter set forth. Your petitioner, as the operator of the smallest type of radio station, engaged in a purely local operation, is one of many operators of small stations situated throughout the United States who are in the same position as petitioner and whose business and property rights will be affected by the determination of this Honorable Court in this proceeding.

Both the District Court and the Court of Appeals treated the present action in a routine manner and failed to give due consideration to the substantial issues of involved. These issues of law have never been squarely raised in, or directly passed upon by, any Federal court prior to the present proceeding.

Section 6 of the Act (29 U.S.C.A. Sec. 206) requires every employer covered by the Act to pay certain minimum wages to each of his employees "who is engaged in commerce or the production of goods for commerce." (Appendix, 17). Section 7 (29 U.S.C.A. Sec. 207) provides for certain maximum hours of employment at the minimum rate and for a higher rate for hours worked over 40 by any employee "engaged in commerce or in the production of goods . . . for commerce" (Appendix 18).

Section 3(b) of the Act (29 U.S.C.A. Sec. 203(b)) defines "commerce" as follows: "(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or between any

State and any place outside thereof." On the undisputed facts, petitioner's employees were not engaged in "commerce" as so defined.

Section 3(i) of the Act defines "goods" as follows: "'goods' means goods . . ., wares, products, merchandice, or articles or subjects of commerce of any character, or any part or ingredient thereof, but *it does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof* . . ." (Emphasis supplied).

Petitioner respectfully submits, and did submit at the argument before the Court of Appeals, that the Fair Labor Standards Act of 1938 as amended did not apply to him since his employees were not, on the admitted facts, engaged in interstate commerce or in the production of goods for commerce as defined in Section 3, subsections (b) and (i) of the Act; that the admitted limit to the signal of his radio station was a radius of 10 miles; in view of the judicial cognizance taken by the District Court Judge that the nearest state line was 51 miles away, petitioner's radio station did not transmit across state lines and was a purely local operation, and that in receiving news from Associated Press, petitioner was in the position of "the ultimate consumer thereof" whose employees were exempt from coverage of the Act.

The opinion of the Court of Appeals (Appendix 15-16) indicates that the sole basis of jurisdiction asserted below was the *receipt* of news by petitioner from an Associated Press wire. This petitioner, as well as other operators of small local radio stations do not furnish news back to Associated Press for transmission and use

elsewhere; the transaction between the Associated Press and the petitioner as an associate member was a one-way transaction, by teletype (Appendix 24). When the news was received by the petitioner it was not sold by him as a service or an article of commerce, but was broadcast over his station free for the purpose of attracting and holding an audience of listeners in order to make the various broadcast time periods valuable for sale to potential advertisers. The business of petitioner was the sale to advertisers of various portions of the broadcast time of station WEMR.

In furtherance of that business, the operator of a radio station utilizes the news received from the Associated Press as "window dressing" in the same manner as the operator of a retail store displays his merchandise and uses decorative materials as background, or in other ways, to embellish his displays of merchandise and attract attention. When the retail storekeeper buys such decorative or display materials for purposes of embellishment, it can hardly be argued that he is other than an ultimate consumer of those materials. By the same token, when the petitioner made use of the news received from Associated Press to "embellish" a particular portion of his broadcast time in order to attract an audience, he was in the same manner "consuming" or using up the news items he received for a purpose purely incidental to his main business.

Upon this basis, the receipt by the petitioner of news from the Associated Press was in the capacity of ultimate consumer. In that capacity and by definition under Section 3, subsections (b) and (i), the employees of the petitioner were not engaged in commerce or in the production of goods for commerce, and the Act should have been declared inapplicable.

This conclusion is supported by the decision in Phillips v. Star Overall Dry Cleaning Company, C.C.A. New York 1945; 149 F. 2d 416, certiorari denied 327 U.S. 780, re-hearing denied 327 U.S. 817, wherein it was held that the "delivery" contemplated under subsection (i) of Section 3 of the Act is one that gives the ultimate consumer the right to deal with the goods as his own while they are being consumed. Clearly, Rennekamp had the right to deal with the news which he received from the Associated Press as his own, to use or not to use the same in whole, or in part, to edit the same, to determine how often the items would be repeated over his station, and in all respects to deal with the news reports in the same manner as he could deal with any other commodity or piece of equipment purchased by him for use in his radio station . (Cf. testimony of Welsh, Appendix 24)

That Congress intended to exempt from the provisions of the Act business activities which are primarily local in character is clear from the nature of the numerous exemptions set forth in Section 13 of the Act (Appendix 18-21).

For example, the following is a partial listing of exemptions: Any employee of any retail or service establishment or establishment engaged in laundering, cleaning, or repairing clothing or fabrics more than 50% of which establishment's annual dollar volume of sales is made within the State; any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than 4,000 the major part of which circulation is within the county where printed and published or counties contiguous thereto; any switchboard operator employed in a public telephone exchange which has not more than 750 sta-

tions; any employee or proprietor in a retail or service establishment engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500.00 a month; any employee engaged in the delivery of newspapers to the consumer.

As pointed out by this court in the opinion of Mr. Justice Douglas in Walling v. Jacksonville Paper Company, 317 U.S. 564 (1943), 570, a case also arising under the Fair Labor Standards Act; ". . . in this connection we cannot be unmindful that Congress in enacting this statute plainly indicated its purpose to leave local business to the protection of the states . . .".

A similar thought was expressed by Mr. Justice Douglas speaking for this Honorable Court in Mabee v. White Plains Publishing Company, 327 U. S. 178 (1946) at page 184 where, referring to the exemption of small weekly and semi-weekly newspapers (the Act now also exempts small daily newspapers) from coverage under the Act, the opinion states that such exemption is not a "deliberate and calculated device to penalize a certain group of newspapers . . . As we have seen, it was inserted to put those papers more on a parity with other small town enterprises."

The plaintiff below, the District Court, and the Court of Appeals all rely upon the decisions in Lorain Journal v. U. S., 342 U.S. 143 (1951), Associated Press v. U.S., 326 U.S. 1 (1945), and Associated Press v. N.L.R.B. 301 U.S. 103 (1937) to sustain the applicability of the Act to the petitioner and the jurisdiction of the Federal courts. Reliance on these decisions is in error for the following reasons:

(a) In the Lorain Journal case, the question of applicability of the Fair Labor Standards Act of 1938 to a small radio station was not raised or directly involved. That was an action brought under the Sherman Anti-Trust Act to restrain improper practices by the newspaper against the interests of the radio station which was assumed to be engaged in interstate commerce and which assumption could be supported on the basis of the much greater power of the radio station involved, reaching into all or part of 20 counties and an estimated population of 450,000 as shown in the official opinion. There is no basis for comparison between the radio station in the Lorain Journal case and the small, purely local station operated by the petitioner at Emporium, Pa. Furthermore, an adjudication under one statute is not necessarily controlling in a case arising under a different statute: Brooklyn Bank v. O'Neill, 324 U.S. 697 (1945).

(b) The two Associated Press cases are not authority in the instant case for the reason that they deal with a situation and a business which is in no wise parallel to the instant case. The Associated Press cases involve the employees engaged in providing a continuous flow of news across state lines on a two-way basis. The nature of the services of the Associated Press was the furnishing of news to its member newspapers in various states and the receipt of news from the member newspapers for transmission of the same in the opposite direction to other newspaper members in other parts of the country.

There is no similarity between the situation of the direct employees of the Associated Press and the three

or four employees of the petitioner in the operation of station WEMR. The testimony produced by plaintiff disclosed that the petitioner was not a regular member of the Associated Press but was in a separate category known as an "Associate Member", involving an arrangement entirely different from that between the Associated Press and its newspaper members. The petitioner as the operator of station WEMR *received* news by teletpye under a special news service for associate members referred to as a special radio service. (Appendix 24). As already pointed out above, in receiving that service, the petitioner and operators of similar local stations throughout the country, constitute the "ultimate consumers" in the sense that said term is used in subsection (i) of Section 3 exempting from the scope of the Fair Labor Standards Act goods after their delivery into the actual physical possession of the ultimate consumer thereof.

Subsection (a) 8 of Section 13 of the Act, 29 U.S.C.A. Section 213, expressly exempts from coverage "any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than 4,000 the major part of which circulation is within the county where printed or published or contiguous thereto . . .". This presents the second basic question involved in this proceeding.

To construe the Fair Labor Standards Act as applicable to the petitioner would result in violation of his constitutional rights under the Fifth Amendment to the Constitution of the United States which guarantees that "no person shall be deprived of life, liberty or property, without due process of law . . .". (Appendix 22)

In view of the absence from the Act of any specific reference to radio stations, and since the small local radio station of the petitioner was held to be covered under the Act upon the same basis as newspapers, to-wit, receipt of news from the news services and dissemination of such news, the exemption provided in the Act for small local newspapers should properly be applied to small local radio stations which are, in all significant respects, upon the same footing as the exempted newspapers. A comparison of the relative positions of the small local newspapers, expressly exempted in the Act from its coverage, and the small local radio stations presents the following points of similarity: both are media of communication; both types of business are comparable from the standpoint of limited number of employees, limited number of readers or listeners, limited area of coverage, limited effectiveness from an advertiser's viewpoint, limited gross income, and the fact that the small local radio stations compete with the small weekly, semi-weekly, or daily newspapers for advertising. In view of these realities, there would appear to be no valid legal basis for distinction between the purely local radio stations and the small weekly, semi-weekly, or daily newspapers specifically exempted in the Act from its coverage.

It should also be noted that Subsection (d) of Section 13 exempts from coverage "any employee engaged in the delivery of newspapers to the consumer". By analogy, the employees of petitioner performed that same function in their news broadcasts.

The action of the lower court in holding that the defendant and radio station WEMR were covered by the Act limited the petitioner in the exercise of his property

right in the operation of the radio station. Furthermore, if, under the injunction issued in this case, petitioner were subsequently charged with contempt of court for violation of the injunction, any punishment imposed could constitute a deprivation of his liberty. In the circumstances here present, to deny petitioner the exemption from coverage would constitute an unwarranted arbitrary and unreasonable discrimination as between him and the smaller classification of newspapers. As expressed by Mr. Chief Justice Warren in the case of Bolling et al. v. Sharpe et al., 347 U.S. 497 (1954) at page 499, ". . . But as this court has recognized, discrimination may be so unjustifiable as to be violative of due process of law . . . .".

In summary, petitioner respectfully submits that the burden of proving the applicability of the Act to him was upon the plaintiff in the lower court: Mitchell v. Joyce Agency, C.A.7, 211 F2d 241 (1954); Mitchell v. Raines, D.C., Ga., 136, F. Supp. 5 (1955); that the plaintiff below failed to meet the burden; that the cases relied upon by the lower courts as bringing petitioner within the coverage of the Act and the jurisdiction of the courts do not sustain their position; and that to hold that petitioner is covered by the Act on the same basis as newspapers without extending to him the benefit of the exemption provisions for small weekly, semi-weekly, and daily newspapers, is an unwarranted, arbitrary, and unreasonable discrimination as between him and the smaller local newspapers and deprives him of his property rights and possibly his liberty in a manner "violative of due process of law."

WHEREFORE, petitioner prays this Honorable Court to grant a Writ of Certiorari to the Court of Appeals for the Third Circuit for the purpose of bringing up the record of this proceeding, and for a review of the decision of the Court of Appeals and of the District Court upon the legal questions involved.

Signed:

KENNETH E. RENNEKAMP,
Petitioner

Signed:

DAVID R. LEVIN
KENNETH E. RENNEKAMP,
Attorneys for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,278

JAMES P. MITCHELL, Secretary of Labor,
United States Department of Labor
v.
KENNETH E. RENNEKAMP, Individually and
Doing Business as Radio Station WEMR,
Appellant,

On Appeal from the United States District Court for the Western District of Pennsylvania

Present: MCLAUGHLIN, KALODNER and STALEY,
Circuit Judges.

Judgment

This cause came on to be heard on the record from United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF
Clerk

January 2, 1958

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 12,278

JAMES P. MITCHELL, Secretary of Labor, United States Department of Labor,

v.

KENNETH E. RENNEKAMP, Individually and Doing Business as Radio Station WEMR,
Appellant.

Appeal from the United States District Court for the Western District of Pennsylvania

Argued December 3, 1957

Before McLAUGHLIN, KALODNER and STALEY,
Circuit Judges.

Opinion of the Court.

(Filed January 2, 1958)

PER CURIAM:

In the district court the Secretary of Labor obtained an injunction against appellant restraining him from violating the minimum wage, overtime and record provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C.A. § 201, et seq.

The record clearly shows that during the critical period appellant's radio station was an associate member of the Associated Press, had a teletype machine of that organization in its office from which it received Associated Press world and national news on a twenty-four hour a day basis for broadcast purposes and that such news was received, edited and broadcast at regular intervals every day in the week except Sunday. The em-

ployees of the station worked as announcers, engineers and announcer-engineers. Among other things they had duties in connection with the Associated Press news reports, operation and maintenance of transmission equipment, preparation of commercials and sale of advertising for the station. These facts brought appellant's employees within the coverage of the Act. Lorain Journal v. United States, 342 U.S. 143 (1951); Associated Press v. United States, 326 U.S. 1 (1945); Associated Press v. N.L.R.B., 301 U.S. 103 (1937). There was substantial proof, accepted by the court sitting without a jury, of violations of the Act. Appellant's contention that application of the Fair Labor Standards Act to him violates the Fifth Amendment is without merit. Though the station has been closed it is conceded that appellant is still interested in at least two other radio stations. In one of these he possesses a fifty per cent partnership interest. The other is a corporation of which he is president. An injunction against violating the Act has been previously issued against the latter station.

The decision of the district court is sound and its injunction against the appellant justified.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Section 3, FAIR LABOR STANDARDS ACT OF 1938, June 25, c. 676, Section 3, 52, Stat. 1060; 1946 Reorg. Plan No. 2, Section 1, Eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; October 26, 1949, C. 736, Section 3, 63 Stat. 911; 29 U. S. C. A. Section 203.

DEFINITIONS.

. . . (b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof . . . (i) "Goods" means goods . . . wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof . . .

Sec. 6, FAIR LABOR STANDARDS ACT OF JUNE 25, 1938, c. 676, Sec. 6, 52 Stat. 1062; June 26, 1940, c.432, Sec. 3(e), (f), 54 Stat. 616; October 26, 1949, c.736, sec. 6, 63 Stat. 912; August 12, 1955, c.867, sec. 3, 69 Stat. 711; 29 U.S.C.A. sec. 206.

MINIMUM WAGES.

(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—(1) not less than $1 an hour; . . . (other portions of this section relating to Puerto Rico or the Virgin Islands are not applicable)

Sec. 7, FAIR LABOR STANDARDS ACT OF 1938, June 25, c. 676, sec. 7, 52 Stat. 1063; October 29, 1941, c.461, 55 Stat. 756; July 20, 1949, c. 352, sec. 1, 63 Stat. 446; October 26, 1949, c.736, sec. 7, 63 Stat. 912; 29 U.S.C.A. sec. 207.

MAXIMUM HOURS.

(a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a work week longer than 40 hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed . . . (additional portions of this section not applicable).

Sec. 13 of the FAIR LABOR STANDARDS ACT of 1938, June 25, c.676, sec. 13, 52 Stat. 1067; August 9, 1939, c.605, 53 Stat. 1266; October 26, 1949, c.736, sec. 11, 63 Stat. 917; 29 U.S.C.A. sec. 213.

* * * * * * *

EXEMPTIONS.

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee employed by any retail or service establishment, more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located. A "retail or service establishment" shall mean

an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or (3) any employee employed by any establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located: Provided, That 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communications business; or (4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: Provided, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof; or (6) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reser-

voirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14 of this title; or (8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where printed and published or counties contiguous thereto; or (9) any employee of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, not included in other exemptions contained in this section; or (10) any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or (11) any switchboard operator employed in a public telephone exchange which has not more than seven hundred and fifty stations; or (12) any employee of an employer engaged in the business of operating taxicabs; or (13) any employee or proprietor in a retail or service establishment as defined in clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 of this title would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month; or (14) any employee employed as a seaman;

or (15) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed twelve.

(b) The provisions of section 7 of this title shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 304 of Title 49 (U.S.C.A.); or (2) any employee of an employer subject to the provisions of sections 1-27 of Title 49 (U.S.C.A.); or (3) any employee of a carrier by air subject to the provisions of sections 181-188 of Title 45 (U.S.C.A.); or (4) any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproducts thereof; or (5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state.

(c) The provisions of section 12 of this relating to child labor shall not apply with respect to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, or to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(d) The provisions of sections 6, 7, and 12 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer.

AMENDMENT V TO U. S. CONSTITUTION

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

From Transcript of Testimony U. S. District Court for the Western District of Pa.

"CHARLES A. WELSH, JR., a witness in behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Weiner:

Q. What is your name?

A. Charles A. Welsh, Jr.

Q. Where do you live?

A. 5207 Lawson Road, Baldwin Borough, Pittsburgh 36.

Q. By whom are you employed?

A. The Associated Press.

Q. How long have you been employed there?

A. Since July 1st, 1942.

Q. What is your present position?

A. Correspondent in charge of the Pittsburgh Bureau of the Associated Press.

Q. How long have you held that position?

A. Since August of 1955.

Q. Could you tell us what kind of an organization the Associated Press is?

A. The Associated Press is a non-profit cooperative news gathering organization gathering news throughout the world for distribution to newspapers and radio stations, principally in the United States and other countries.

Q. Are there associate memberships in the Associated Press?

A. Yes, we have a category which we list as associate membership. I am unable to give you the technical

differentiation between associate and regular member. (PP. 66-67)

* * * * * * *

Q. Do you have what is known as a special AP radio news service wire report for broadcasting stations?

A. Yes, we do, sir.

Q. Will you explain to the Court just what that consists of?

A. The AP radio wire is a leased wire which carries news principally designed for radio broadcast; news written for radio broadcast must be prepared in a different style of writing than the news prepared for newspaper publication and in order to adequately serve radio stations, the AP set up this very separate operation which goes to radio stations and from which they can receive it in teletype copy, ready for broadcast if they choose to use it as it is received.

Q. And the teletype service, do you know whether the radio stations have ticker service, ticker machines in the stations to receive this teletype service?

A. A radio member of the Associated Press will have a teletype receiver, not a ticker—there is a difference—a teletype receiver in its station or at its broadcasting studio somewhere where the news is handled. (PP. 70-71)"

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